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MEMORANDUM

TO: County Auditors, County Council Members, School Corporation Officials

FROM: Cheryl A.W. Musgrave, Commissioner *awm*

DATE: November 25, 2008

SUBJECT: Petition and Remonstrance and Referendum Processes (IC 6-1.1-20)

The purpose of this memorandum is to inform all local officials of the new referendum / local public question process, and the amended petition and remonstrance process as amended and added into the law by House Enrolled Act (HEA) 1001 (P.L. 146-2008). Attached to this memorandum is a flowchart developed by the Department of Local Government Finance ("Department") to further assist taxpayers and local officials of the new procedures by which a local capital project can be approved.

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PETITION AND REMONSTRANCE PROCESS

The petition-remonstrance process applies only to the following:

1. A controlled project for which the proper officers of a political subdivision make a preliminary determination *before* July 1, 2008.
2. An elementary school building, middle school building, or other school building for academic instruction that:
 - is a controlled project;
 - will be used for any combination of K-8; and
 - will cost between more than the lesser of \$2 million or 1% of the total gross AV of property within the political subdivision (\$1 million minimum); and **\$10,000,000**.

Example: A \$3 million elementary school building project to construct two new kindergarten classrooms and a 1st grade classroom; to be used for academic instruction; and financed by a bond issue paid for by a property tax levy imposed to pay the bonded indebtedness, is a project subject to the remonstrance-petition process for the following reasons:

- **project is a controlled project because it is paid from a fund exempt from the levy controls (e.g., debt service fund), and the project cost is over the \$2 million controlled project threshold;**
- **project is for “academic instruction” used for K-8; and**
- **project cost of \$3 million is less than the \$10 million referendum threshold.**

3. A high school building or other school building for academic instruction that:
 - is a controlled project;
 - will be used for any combination of grade 9-12; and
 - will cost between more than the lesser of \$2 million or 1% of the total gross AV of property within the political subdivision (\$1 million minimum); and **\$20,000,000**.

Example: A \$15 million high school building project to construct a new science lab for 9th and 10th graders; to be used for academic instruction; and financed by a bond issue paid for by a property tax levy imposed to pay the bonded indebtedness. The project is subject to the remonstrance-petition process for the following reasons:

- **project is a controlled project because it is paid from a fund exempt from the levy controls, and the project cost exceeds the \$2 million controlled project threshold;**
- **project is for “academic instruction” used for a combination of grade 9-12; and**
- **project cost of \$15 million is less than the \$20 million referendum threshold.**

4. Any other controlled project that:

- is *not* a school building project for academic instruction (e.g., city or town project); and
- will cost between:
 - *more than the lesser of* \$2 million or 1% of the total gross AV of property within the political subdivision (\$1 million floor); and
 - *less than the lesser of* **\$12,000,000 or** an amount equal to **1% of the total gross assessed value** of property within the political subdivision on the last assessment date (\$1 million minimum). IC 6-1.1-20-3.1(a).

Example: A \$3.75 million town project for road construction and repairs; 1% of the total gross AV of the town is \$5 million; and the road project is financed by a bond issue paid for by a property tax levy imposed to pay the bonded indebtedness. The project is subject to the petition-remonstrance process for the following reasons:

- The project is a controlled project because it is paid from the town's debt service fund and it exceeds the \$2 million controlled project threshold;
- The project is a local government project; and
- The \$3.75 million cost of the town project is more than the \$2 million controlled project threshold and less than the \$5 million, or 1% of total gross AV, referendum threshold (if project cost was over \$5 million, it'd be subject to referendum process).

Petition and Remonstrance: Application Process

A political subdivision may *not* impose property taxes to pay debt service on bonds or lease rentals on a lease for a controlled project without completing the following procedures:

1. Public Hearing to Make Preliminary Determination on Bond Issue / Lease Rental.

The proper officers of a political subdivision must:

- publish legal notice once at least ten (10) days before the preliminary determination hearing.
- send notice by first class mail to any organization that delivers to the officers, before January 1 of that year, an annual written request for such notices of the preliminary determination hearing. IC 6-1.1-20-3.1(b)(1).

Note: *If a school corporation proposes to construct, repair, or alter a school building at a cost of more than one million dollars (\$1,000,000) that would be financed by entering into a lease agreement; issuing bonds; or any other available method, the school board holds a "1028*

hearing” to explain the potential value of the proposed project to the school corporation and to the community. This “1028 hearing” is often combined with the preliminary determination process into one notice and one hearing. IC 20-26-7-37.

2. Notice of Preliminary Determination to Issue Bonds / Enter Lease.

When the political subdivision makes a preliminary determination to issue bonds or enter into a lease for a controlled project, it must give notice of the preliminary determination by:

- publication of the preliminary determination one (1) time within thirty (30) days after the passage of the ordinance or resolution; and
- send notice by first class mail to the organization(s) that made a request for such notice. IC 6-1.1-20-3.1(b)(2).

3. Contents of Preliminary Determination Legal Notice.

The notice of the preliminary determination must include:

- The maximum term of the bonds or lease.
- The maximum principal amount of the bonds or the maximum lease rental for the lease.
- The estimated interest rates that will be paid and the total interest costs associated with the bonds or lease.
- The purpose of the bonds or lease.
- A statement that any owners of real property within the political subdivision or registered voters residing within the political subdivision who want to initiate a petition and remonstrance process against the proposed debt service or lease payments must file a valid petition not later than thirty (30) days after publication of the legal notice.
- With respect to bonds issued or a lease entered into to open:
 - a new school facility; *or*
 - an existing facility that has not been used for at least three (3) years and that is being reopened to provide additional classroom space --

-- the estimated costs the school expects to incur annually to operate the facility
- A statement of whether the school corporation expects to appeal for a new facility adjustment [IC 20-43-11.5] for an increased maximum permissible tuition support levy to pay the estimated costs.
- The political subdivision’s current debt service levy and rate and the estimated increase to the political subdivision’s debt service levy and rate that will result if the political subdivision

issues the bonds or enters into the lease. IC 6-1.1-20-3.1(b)(3).

4. Petition to Start Petition and Remonstrance Process.

After the legal notice is published, a petition requesting the application of the petition and remonstrance process may be filed *by the lesser of*:

- one hundred (100) persons who are either real property owners within the political subdivision or registered voters residing within the political subdivision; *or*
- five percent (5%) of the registered voters residing within the political subdivision. IC 6-1.1-20-3.1(b)(4).

5. Petition Forms by State Board of Accounts.

The State Board of Accounts (SBoA) must deliver to the county voter registration office the petition forms to be used in the petition process. The county voter registration office must issue to an owner(s) of real property or a registered voter residing within the political subdivision the number of petition forms requested by the owner(s) or the registered voter.

Each form must be accompanied by instructions detailing the requirements that:

- the carrier and signers must be owners of real property or registered voters;
- the carrier must be a signatory on at least one (1) petition;
- after the signatures* have been collected, the carrier must swear or affirm before a notary public that the carrier witnessed each signature; *and*
- govern the closing date for the petition period.

Persons requesting forms may be required to identify themselves as owners of real property or registered voters and may be allowed to pick up additional copies to distribute to other property owners or registered voters.

Each person signing a petition must indicate whether they are signing the petition as a registered voter within the political subdivision or is signing the petition as the owner of real property within the political subdivision.

A person who signs a petition as a registered voter must indicate the address at which the person is registered to vote.

* If the validity of a signature is uncertain, a reasonable doubt must be resolved in favor of the validity of the signature. Whenever the name or address of the individual, as printed or signed, contains a minor variation from the name of the individual as set forth in the relevant county records, the signature is considered valid. IC 6-1.1-20-11.

A person who signs a petition as a real property owner must indicate the address of the real property owned by the person in the political subdivision. IC 6-1.1-20-3.1(b)(5).

6. Verification of Each Petition.

Each petition must be verified under oath by at least one (1) qualified petitioner in a manner prescribed by the SBoA before the petition is filed with the county voter registration office. IC 6-1.1-20-3.1(b)(6).

7. File Application Petitions Not More Than Thirty (30) Days After Preliminary Determination.

Each petition must be filed with the county voter registration office not more than thirty (30) days after publication of the notice of the preliminary determination. IC 6-1.1-20-3.1(b)(7).

8. Determination of Registered Voter and Real Property Owner Status.

The county voter registration office must determine whether each person who signed the petition is a registered voter.

The county voter registration office must within fifteen (15) *business* days after receiving a petition forward a copy of the petition to the county auditor.

Within ten (10) *business* days after receiving the copy of the petition, the county auditor must provide to the county voter registration office a statement verifying:

- whether a person who signed the petition as a registered voter but is not a registered voter, as determined by the county voter registration office, is the owner of real property in the political subdivision; *and*
- whether a person who signed the petition as an owner of real property within the political subdivision does in fact own real property within the political subdivision. IC 6-1.1-20-3.1(b)(8).

9. Determination of Sufficient Number of Petitioners.

The county voter registration office must within ten (10) *business* days after receiving the statement from the county auditor make the final determination of the number of petitioners that are registered voters in the political subdivision and, based on the statement provided by the county auditor, the number of petitioners that own real property within the political subdivision.

Whenever the name of an individual who signs a petition form as a registered voter contains a minor variation from the name of the registered voter as set forth in the records of the county voter registration office, the signature is presumed to be valid, and there is a presumption that the individual is entitled to sign the petition.

In determining whether an individual is a registered voter, the county voter registration office must apply the requirements and procedures used under Title 3 of the Indiana Code 3 [Election law] to determine whether a person is a registered voter for purposes of voting in an election. However, an

individual is not required to comply with the provisions concerning providing proof of identification to be considered a registered voter for remonstrance purposes.

A person is entitled to sign a petition only one (1) time in a particular petition and remonstrance process, regardless of whether the person owns more than one (1) parcel of real property within the subdivision and regardless of whether the person is both a registered voter in the political subdivision and the owner of real property within the political subdivision.

If a petition is presented to the county voter registration office within thirty-five (35) days *before* an election, the county voter registration office may defer acting on the petition, and the time requirements for action by the county voter registration office do *not* begin to run until five (5) days *after* the date of the election. IC 6-1.1-20-3.1(b)(9).

10. Filing of Certificate and Petition with Issuing Body by County Voter Registration Office.

The county voter registration office must file a certificate and each petition with:

- the township trustee, if the political subdivision is a township, who must present the petition(s) to the township board; *or*
- the body that has the authority to authorize the issuance of the bonds or the execution of a lease (if the political subdivision is not a township) within thirty-five (35) *business* days of the filing of the petition requesting the petition and remonstrance process.

The certificate must state the number of petitioners that are owners of real property within the political subdivision and the number of petitioners who are registered voters residing within the political subdivision. IC 6-1.1-20-3.1(b)(10).

11. If Petition for Petition/Remonstrance Process Insufficient: Issue Bonds / Enter Lease.

If a sufficient petition requesting a petition and remonstrance process is *not* filed by owners of real property or registered voters, the political subdivision may issue bonds or enter into a lease by following the provisions of law relating to the bonds to be issued or lease to be entered into. *Id.*

Petition and Remonstrance: “Race” for Signatures

If a sufficient petition has been filed requesting the application of the petition and remonstrance process, a political subdivision may *not* impose property taxes to pay debt service on bonds or lease rentals on a lease for a controlled project without completing the following steps:

1. Publish Notice of Applicability of Petition and Remonstrance Process.

The political subdivision must give notice of the applicability of the petition and remonstrance process by:

- publication one (1) time within thirty (30) days after the date of the filing of the certificate and each petition by the county voter registration office with the issuing body; *and*
- first class mail to the organization(s) that requested notice. IC 6-1.1-20-3.2(b)(1).

2. Contents of Notice on “Race” for Signatures.

The legal notice must include a statement that any owners of real property or registered voters residing within the political subdivision who want to petition *in favor of* or *remonstrate against* the proposed debt service or lease payments must file petitions and remonstrances between thirty (30) days and sixty (60) days after publication of the legal notice. IC 6-1.1-20-3.2(b)(1).

3. Race for Signatures Starts.

Thirty (30) to sixty (60) days after the legal notice of the applicability of the petition and remonstrance process is published, petitions *in favor of* the bonds or lease and remonstrances *against* the bonds or lease may be filed by an owner(s) of real property within the political subdivision or a registered voter residing within the political subdivision.

Each signature on a petition must be dated, and the date of signature may *not* be before the date on which the petition and remonstrance forms may be issued.

A petition or a remonstrance must be verified before the petition or remonstrance is filed with the county voter registration office. IC 6-1.1-20-3.2(b)(2).

4. SBoA Form Contents.

The SBoA delivers to the county voter registration office the petition and remonstrance forms to be used in the petition and remonstrance process.

The county voter registration office must issue to an owner(s) of real property or a registered voter residing within the political subdivision the number of petition or remonstrance forms requested by the owner(s) or the registered voter.

Each form must be accompanied by instructions detailing the requirements that:

- the carrier and signers must be owners of real property or registered voters;
- the carrier must be a signatory on at least one (1) petition;
- after the signatures have been collected, the carrier must swear or affirm before a notary public that the carrier witnessed each signature;
- govern the closing date for the petition and remonstrance period;
- the restrictions on promotion of position by political subdivision apply to the carrier.

Persons requesting forms may be required to identify themselves as owners of real property or registered voters and may be allowed to pick up additional copies to distribute to other property owners or registered voters.

Each person signing a petition or remonstrance must indicate whether the person is signing the petition or remonstrance as a registered voter within the political subdivision or is signing the petition or remonstrance as the owner of real property within the political subdivision.

A person who signs a petition or remonstrance as a registered voter must indicate the address at which the person is registered to vote.

A person who signs a petition or remonstrance as a real property owner must indicate the address of the real property owned by the person in the political subdivision.

The county voter registration office may not issue a petition or remonstrance form earlier than twenty-nine (29) days after the notice of the applicability of the petition and remonstrance process is published.

The county voter registration office must certify the date of issuance on each petition or remonstrance form. IC 6-1.1-20-3.2(b)(3).

5. Verification of Petitions and Remonstrances.

The petitions and remonstrances must be verified in the manner required by the SBoA and filed with the county voter registration office within the sixty (60) day period. IC 6-1.1-20-3.2(b)(4).

6. Determination of Registered Voter and Real Property Owner Status.

The county voter registration office must determine whether each person who signed the petition or remonstrance is a registered voter.

The county voter registration office has fifteen (15) *business* days after receiving a petition or remonstrance to forward a copy of the petition or remonstrance to the county auditor.

Not more than ten (10) *business* days after receiving the copy of the petition or remonstrance, the county auditor must give to the county voter registration office a statement verifying:

- whether a person who signed the petition or remonstrance as a registered voter but is not a registered voter, as determined by the county voter registration office, is the owner of real property in the political subdivision; and
- whether a person who signed the petition or remonstrance as an owner of real property within the political subdivision does in fact own real property within the political subdivision. IC 6-1.1-20-3.2(b)(5).

7. County Voter Registration Office's Final Tally of Signed Petitions and Remonstrances.

The county voter registration office must within ten (10) *business* days after receiving the statement from the county auditor make the final determination of:

- the number of registered voters in the political subdivision that signed a petition and, based on the statement provided by the county auditor, the number of owners of real property within the political subdivision that signed a petition; *and*
- the number of registered voters in the political subdivision that signed a remonstrance and, based on the statement provided by the county auditor, the number of owners of real property within the political subdivision that signed a remonstrance.

Whenever the name of an individual who signs a petition or remonstrance as a registered voter contains a minor variation from the name of the registered voter as set forth in the records of the county voter registration office, the signature is presumed to be valid, and there is a presumption the individual is entitled to sign the petition or remonstrance.

In determining whether an individual is a registered voter, the county voter registration office must apply the requirements and procedures used under Title 3 of the Indiana Code [Election law] to determine whether a person is a registered voter for purposes of voting in an election. However, an individual is *not* required to comply with the provisions concerning providing proof of identification to be considered a registered voter for purposes of the petition and remonstrance process.

A person is entitled to sign a petition or remonstrance only one (1) time in a particular petition and remonstrance process, regardless of whether the person owns more than one (1) parcel of real property within the subdivision and regardless of whether the person is both a registered voter in the political subdivision and the owner of real property within the political subdivision.

If a petition or remonstrance is presented to the county voter registration office within thirty-five (35) days *before* an election, the county voter registration office may defer acting on the petition or remonstrance. The time requirements for action by the county voter registration office do not begin to run until five (5) days *after* the date of the election. IC 6-1.1-20-3.2(b)(6).

8. Certification of Petition or Remonstrance with Issuing Body.

The county voter registration office must file a certificate and the petition or remonstrance with the political subdivision charged with issuing bonds or entering into leases within thirty-five (35) *business* days of the filing of a petition or remonstrance with the county voter registration office, whichever applies, containing ten thousand (10,000) signatures or less.

The county voter registration office may take an additional five (5) days to review and certify the petition or remonstrance for each additional five thousand (5,000) signatures up to a maximum of sixty (60) days.

The certificate must state the number of petitioners and remonstrators that are owners of real property within the political subdivision and the number of petitioners who are registered voters residing

within the political subdivision. IC 6-1.1-20-3.2(b)(7).

9. Consequences of Successful Remonstrance.

If a greater number of persons who are either owners of real property or registered voters residing within the political subdivision sign a remonstrance than the number that signed a petition, **the bonds petitioned for may *not* be issued or the lease petitioned for may *not* be entered into.**

The proper officers of the political subdivision may *not* make a preliminary determination to issue bonds or enter into a lease for the controlled project defeated by the petition and remonstrance process or any other controlled project that is *not* substantially different within one (1) year after the date of the county voter registration office's certificate.

Withdrawal of a petition carries the same consequences as a defeat of the petition. IC 6-1.1-20-3.2(b)(8).

10. No Other Procedure Required after Petition and Remonstrance Process.

After a political subdivision has gone through the petition and remonstrance process, the political subdivision is *not* required to follow any other remonstrance or objection procedures. IC 6-1.1-20-3.2(b)(9).

REFERENDUM / LOCAL PUBLIC QUESTION PROCESS

The local public question / referendum process applies only to a controlled project where the proper officers of the political subdivision make a preliminary determination to issue bonds or enter into a lease for the controlled project:

1. An elementary school building, middle school building, or other school building for academic instruction that:
 - will be used for any combination K-8; and
 - will cost **more than \$10,000,000.**

Example: A \$30 million elementary and middle school building project that involves the construction of new classrooms for students in K-8; to be used for academic instruction; and financed by a lease rental agreement paid for by a property tax levy imposed to pay the lease rental payments, is a project subject to the referendum process for the following reasons:

- **project is a controlled project because it is paid from a fund exempt from the property tax levy limits, and the project cost exceeds \$2 million controlled project threshold;**
- **project is for “academic instruction” used for K-8; and**
- **project cost of \$30 million is above the \$10 million referendum threshold.**

2. A high school building or other school building for academic instruction that:

- will be used for any combination of grades 9-12; and
- will cost **more than \$20,000,000**.

Example: A \$40 million high school building project to construct new science labs, a swimming pool for use in physical education classes, and new classrooms for 9-12 graders; to be used for academic instruction; and financed through a lease rental agreement paid for by a property tax levy imposed to pay the annual rental payments. The project is subject to the referendum process for the following reasons:

- the project is a controlled project because it is paid from a fund exempt from the property tax levy limits, and the project cost exceeds \$2 million controlled project threshold;
- project is for “academic instruction” used for a combination of grade 9-12; and
- project cost of \$40 million is more than \$20 million referendum threshold.

3. Any other controlled project that:

- is *not* a school building project for academic instruction; and
- will cost the political subdivision *more than the lesser of:*
 - **\$12,000,000**; or
 - an amount equal to **1% of the total gross assessed value** of property within the political subdivision on the last assessment date (if that amount is at least \$1,000,000). IC 6-1.1-20-3.5(a)(1)(A)-(C).

Example: An \$8 million town project for major road construction and repairs; one percent (1%) of the total gross AV of the town is \$3 million; and the road project is financed by a bond issue paid for by a property tax levy imposed to pay the bonded indebtedness. The project is subject to the referendum process for the following reasons:

- The project is a controlled project because it is paid from debt service fund, and the \$8 million project cost exceeds \$2 million controlled project threshold.
- The project is not an elementary, middle, or high school building project for academic instruction.
- The project cost is \$8 million, which is more than the \$3 million referendum threshold -- one percent (1%) of the total gross assessed value of property within the town.

Referendum / Local Public Question: Application Process

A political subdivision must complete the following steps in order to impose property taxes to pay debt service on bonds or lease rentals on a lease for a controlled project:

1. Public Hearing to Make Preliminary Determination to Issue Bonds / Enter Lease.

The political subdivision must publish legal notice once at least ten (10) days before the preliminary determination hearing.

The political subdivision must send notice by first class mail to any organization that delivers to the political subdivision, before January 1 of that year, an annual written request for notices of any meeting to consider the adoption of an ordinance or a resolution making a preliminary determination.

The political subdivision must conduct a public hearing on the preliminary determination before adoption of the ordinance or resolution preliminarily determining to issue bonds or enter into a lease to finance the project.

The political subdivision must make the following information available to the public at the public hearing on the preliminary determination, in addition to any other information required by law:

- The result of the political subdivision's current and projected annual debt service payments divided by the net assessed value of taxable property within the political subdivision.
- The result of:
 - the political subdivision's total outstanding long term debt *plus* the outstanding long term debt of other taxing units that include any of the territory of the political subdivision; *divided by*
 - the net assessed value of taxable property within the political subdivision. IC 6-1.1-20-3.5(b)(1).

Note: If a school corporation proposes to construct, repair, or alter a school building at a cost of more than \$1,000,000 that would be financed by entering into a lease agreement; issuing bonds; or any other available method, the school board holds a "1028 hearing" to explain the potential value of the proposed project to the school corporation and to the community. This "1028 hearing" is often combined with the preliminary determination process into one notice and one hearing. IC 20-26-7-37.

2. Notice of Preliminary Determination to Issue Bonds / Enter Lease.

If the proper officers of a political subdivision make a preliminary determination to issue bonds or enter into a lease, notice of the preliminary determination must be given by:

- publication of the preliminary determination one (1) time within thirty (30) days after the passage of the ordinance or resolution; and

- first class mail to the organizations that requested notice. IC 6-1.1-20-3.5(b)(2).

3. Content of Preliminary Determination Notice.

A preliminary determination notice of the political subdivision to issue bonds or enter into a lease must include the following information:

- The maximum term of the bonds or lease.
- The maximum principal amount of the bonds or the maximum lease rental for the lease.
- The estimated interest rates that will be paid and the total interest costs associated with the bonds or lease.
- The purpose of the bonds or lease.
- A statement that the proposed debt service or lease payments must be approved in an election on a local public question.
- With respect to bonds issued or a lease entered into to open:
 - a new school facility; or
 - an existing facility that has not been used for at least three (3) years and that is being reopened to provide additional classroom space --

-- the estimated costs the school corporation expects to annually incur to operate the facility.
- The political subdivision's current debt service levy and rate and the estimated increase to the debt service levy and rate that will result if the political subdivision issues the bonds or enters into the lease. IC 6-1.1-20-3.5(b)(3).

4. Petition Requesting Application of Local Public Question / Referendum Process.

After notice of the preliminary determination is given, a petition requesting the application of the local public question / referendum process may be filed by the lesser of:

- one hundred (100) persons who are either owners of real property within the political subdivision or registered voters residing within the political subdivision; or
- five percent (5%) of the registered voters residing within the political subdivision. IC 6-1.1-20-3.5(b)(4).

5. SBoA Forms.

The SBoA must deliver to the county voter registration office or the county voter registration office's designated printer the petition forms to be used solely in the petition process. The county voter registration office must issue to an owner(s) of real property within the political subdivision or a

registered voter residing within the political subdivision the number of petition forms requested by the owner(s) or the registered voter.

Each form must be accompanied by instructions detailing the requirements that:

- the carrier and signers must be owners of real property or registered voters;
- the carrier must be a signatory on at least one (1) petition;
- after the signatures have been collected, the carrier must swear or affirm before a notary public that the carrier witnessed each signature; and
- govern the closing date for the petition period.

Persons requesting forms may be required to identify themselves as owners of real property or registered voters and may be allowed to pick up additional copies to distribute to other property owners or registered voters.

Each person signing a petition must indicate whether the person is signing the petition as a registered voter within the political subdivision or is signing the petition as the owner of real property within the political subdivision. A person who signs a petition as a registered voter must indicate the address at which the person is registered to vote.

A person who signs a petition as a real property owner must indicate the address of the real property owned by the person in the political subdivision. IC 6-1.1-20-3.5(b)(5).

6. Verification of Each Petition.

Each petition must be verified under oath by at least one (1) qualified petitioner in a manner prescribed by the SBoA before the petition is filed with the county voter registration office. IC 6-1.1-20-3.5(b)(6).

7. File Petitions Not More than 30 Days After Preliminary Determination.

Each petition must be filed with the county voter registration office **not more than thirty (30) days** after publication of the notice of the preliminary determination. IC 6-1.1-20-3.5(b)(7).

8. Determination of Registered Voter and Real Property Owner Status.

The county voter registration office must determine whether each person who signed the petition is a registered voter. However, after the county voter registration office has determined that at least one hundred twenty-five (125) persons who signed the petition are registered voters within the political subdivision, the county voter registration office is *not* required to verify whether the remaining persons are registered voters.

Note: The verification of one hundred twenty-five (125) signatures of registered voters is to guarantee a “cushion” above the one hundred (100) signature requirement to place the local public / referendum question on the ballot. The purpose of the “cushion” is to expedite the

process for the county voter registration office by not requiring verification of any signatures beyond one hundred twenty-five (125) signatures of registered voters.

In other words, if the county voter registration office receives a petition with five hundred (500) signatures requesting a referendum on a controlled project for a school, the county voter registration office can stop counting after one hundred twenty-five (125) signatures of registered voters are verified rather than having to verify all five hundred (500) signatures.

If the county voter registration office does *not* determine that at least one hundred twenty-five (125) persons who signed the petition are registered voters, the county voter registration office, **not more** than fifteen (15) *business* days after receiving a petition, must forward a copy of the petition to the county auditor.

Not more than ten (10) *business* days after receiving the copy of the petition, the county auditor must provide to the county voter registration office a statement verifying:

- whether a person who signed the petition as a registered voter but is *not* a registered voter, is instead the owner of real property in the political subdivision; *and*
- whether a person who signed the petition as an owner of real property within the political subdivision does in fact own real property within the political subdivision. IC 6-1.1-20-3.5(b)(8).

9. Determination of Sufficient Number of Petitioners.

Not more than ten (10) business days after determining that at least one hundred twenty-five (125) persons who signed the petition are registered voters or after receiving the statement from the county auditor of real property owners (if applicable), **the county voter registration office must make the final determination of whether the lesser of one hundred (100) real property owners or registered voters within the political subdivision, or five percent (5%) of the registered voters within the political subdivision signed the petition.**

Whenever the name of an individual who signs a petition form as a registered voter contains a minor variation from the name of the registered voter as set forth in the county voter registration office's records, the signature is presumed to be valid, and there is a presumption that the individual is entitled to sign the petition.

In determining whether an individual is a registered voter, the county voter registration office must apply the requirements and procedures used under Indiana Code Title 3 [Elections] to determine whether a person is a registered voter for purposes of voting in an election.

However, an individual is *not* required to comply with the provisions concerning providing proof of identification to be considered a registered voter.

A person is entitled to sign a petition only one (1) time in a particular referendum process, regardless of whether the person owns more than one (1) parcel of real property within the political subdivision and regardless of whether the person is both a registered voter in the political subdivision and the owner of real property within the political subdivision.

If a petition is presented to the county voter registration office within thirty-five (35) days before an election, the county voter registration office may defer acting on the petition, and the time requirements for action by the county voter registration office do *not* begin to run until five (5) days after the date of the election. IC 6-1.1-20-3.5(b)(9).

10. Filing of Certificate and Petition with Issuing Body by County Voter Registration Office.

The county voter registration office must file a certificate and each petition with:

- the township trustee, if the political subdivision is a township, who must then present the petition(s) to the township board; or
 - the body that has the authority to authorize the issuance of the bonds or the execution of a lease, if the political subdivision is *not* a township --
- within thirty-five (35) *business* days of the filing of the petition requesting the referendum process.

The certificate must state the number of petitioners who are owners of real property within the political subdivision and the number of petitioners who are registered voters residing within the political subdivision. IC 6-1.1-20-3.5(b)(10).

11. If Petition for Referendum Not Filed: Political Subdivision May Issue Bonds/Enter Lease.

If a sufficient petition requesting the local public question / referendum process is *not* filed by owners of real property or registered voters, the political subdivision may issue bonds or enter into a lease by following the provisions of law relating to the bonds to be issued or lease to be entered into. IC 6-1.1-20-3.5(b)(11).

12. Political Subdivision Provides Information to County Auditor.

If the political subdivision makes a preliminary determination to issue bonds or enter into a lease, the officers are required to provide to the county auditor:

- a copy of the notice of the preliminary determination published in the newspaper(s); and
- any other information the county auditor requires to fulfill his/her referendum duties. IC 6-1.1-20-3.5(c).

Referendum / Local Public Question: Voting Process

If a sufficient petition requesting the application of the referendum/ local public question process has been filed, a political subdivision may *not* impose property taxes to pay debt service on bonds or lease rentals on a lease for a controlled project unless the proposed debt service or lease rental is approved in an election. IC 6-1.1-20-3.6(b).

1. Form of Referendum / Local Public Question.

The following question is submitted to the voters at the election:

“Shall _____ (insert the name of the political subdivision) issue bonds or enter into a lease to finance _____ (insert the description of the controlled project)?”

This question was placed in quotation marks in the law, which indicates the exact language and format is to be used on the ballot. The referendum / local public question must appear on the ballot in this format with the necessary information filled in to meet the particulars of the project. IC 6-1.1-20-3.6(c).

2. Certification of Referendum / Local Public Question Deadline.

The county auditor is required to certify the referendum / local public question to the county election board no later than noon (12:00):

(1) sixty (60) days before a primary election if the public question is to be placed on the primary or municipal primary election ballot; *or*

(2) August 1 if the public question is to be placed on the general or municipal election ballot.
IC 3-10-9-3.

3. Referendum / Local Public Question Placed on Ballot at Next Election or Special Election.

After the public question is certified by the county auditor to the county election board by the deadline, the public question is placed on the ballot **at the next primary election, general election, or municipal election** in which all voters of the political subdivision are entitled to vote.

However, if a primary election, general election, or municipal election will *not* be held in the six (6) month period after the county auditor certifies the public question, the public question will be placed on the ballot at a **special election to be held between ninety (90) days and one hundred (120) days after the public question is certified** if the fiscal body of the political subdivision that wishes to issue the bonds or enter into the lease requests the public question be voted on in a special election.

In a year where a **general election or municipal election is held**, the public question may be placed on the ballot at a special election only if the fiscal body of the **political subdivision** that requests the special election *agrees to pay the costs of holding the special election.*

In a year where **a general election or a municipal election is not held**, the fiscal body of the **political subdivision** that requests the special election is *not required to pay the costs of holding the special election.*

The county election board must publish notice one (1) time, at least ten (10) days before the date of the special election, of the special election. The special election is under the direction of the county election board. The county election board must take all steps necessary to carry out the special election. IC 6-1.1-20-3.6(d); IC 5-3-1-2(c).

4. Circuit Court Clerk Certifies Results of Referendum / Local Public Question.

The circuit court clerk must certify the results of the public question to:

- The county auditor of each county in which the political subdivision is located; and
- The Department. IC 6-1.1-20-3.6(e).

5. Political Subdivision May Issue Bonds or Enter Lease if a Majority of Voter “Yes”.

Subject to the requirements of IC 6-1.1-18.5-8, the political subdivision may issue the proposed bonds or enter into the proposed lease rental if a majority of the voters voting on the public question vote in favor of the public question. IC 6-1.1-20-3.6(f).

6. Political Subdivision May *Not* Issue Bonds or Enter Lease if a Majority of Voter “No”.

If a majority of the voters voting on the public question vote in opposition to the public question:

- The political subdivision may *not* issue the bonds or enter into the lease rental; and
- Another public question on the same or a substantially similar project may *not* be submitted to the voters earlier than one (1) year after the date of the election. IC 6-1.1-20-3.6(g).

7. Artificially Dividing Projects to Avoid Referendum Process is Prohibited.

A political subdivision may *not* artificially divide a capital project into multiple capital projects in order to avoid the referendum / local public question requirements. IC 6-1.1-20-3.6(i).

**RESTRICTIONS ON PROMOTION OF POSITION OF DURING
PETITION AND REMONSTRANCE AND REFERENDUM**

1. Prohibition on Promoting Position of Political Subdivision.

For the petition and remonstrance process, beginning with the adoption of the ordinance or resolution making a preliminary determination and, if the petition and remonstrance process has started, through the sixty (60) day period commencing with the publication of the notice of the applicability of the petition and remonstrance process, the political subdivision may *not* promote a position on the petition or remonstrance.

For the referendum / local public question process, beginning with the adoption of the ordinance or resolution making a preliminary determination and continuing through the day on which a local public question is submitted to the voters, the political subdivision may not promote a position on the referendum / local public question.

Under the petition / remonstrance and referendum / local public question processes, the political subdivision may not promote a position on the local public question by doing any of the following:

- Allowing the use of facilities or equipment, including mail and messaging systems, for public relations purposes to promote a position on the petition or remonstrance, *unless* equal access to the facilities or equipment is given to persons with a position opposite to that of the political subdivision.
- Spending money controlled by the political subdivision to promote a position on the petition or remonstrance, or to pay for the gathering of signatures. *A political subdivision, however, may hire an attorney, an architect, registered professional engineer, a construction manager, or a financial adviser for professional services regarding a controlled project.*
- Using an employee to promote a position on the petition or remonstrance during normal working hours or paid overtime, or otherwise forcing an employee to promote a position on the petition or remonstrance at any time.
- In the case of a school corporation, promoting a position on a petition or remonstrance by:
 - using students to transport written materials to their homes, or in any way directly involving students in a school-organized promotion of a position; or
 - including a statement within another communication sent to the students' residences. IC 6-1.1-20-10(a); IC 6-1.1-20-10.1(b).

A person may *not* solicit or collect signatures for a petition or remonstrance on property owned or controlled by the political subdivision. IC 6-1.1-20-10(b).

2. School Specific Prohibitions.

A school corporation's staff and employees may *not* personally identify a student as the child of a parent or guardian who supports or opposes a petition or remonstrance.

A person or an organization that has a contract or arrangement with a school corporation for the use of any facilities may *not* spend any money to promote a position on the petition or remonstrance. A person or an organization that violates this subsection commits a Class A infraction. IC 6-1.1-20-10(c)-(d); IC 6-1.1-20-10.1(c)-(d).

3. Penalties.

An attorney, an architect, registered professional engineer, a construction manager, or a financial adviser for professional services provided with respect to a controlled project may *not* spend any money to promote a position on the petition or remonstrance. If they do so, the person commits a Class A infraction and is barred from performing any services with respect to the controlled project. IC 6-1.1-20-10(e); IC 6-1.1-20-10.1(e).

CIRCUIT BREAKER IMPACT

Beginning with property taxes first due and payable in 2009, property taxes imposed after being approved by the voters in a referendum or local public question shall *not* be considered for purposes of calculating a person's Circuit Breaker credit. IC 6-1.1-20.6-7(d); IC 6-1.1-20.6-7.5(b).

FOR BOND ISSUES AND LEASE RENTALS OVER \$5,000

When a political subdivision decides to issue bonds or enter into leases in a total amount which exceeds five thousand dollars (\$5,000), they shall give notice of the decision by:

- posting; *and*
- publication once each week for two (2) weeks.

The notice of the decision to issue bonds or enter into a lease must be posted in three (3) public places in the political subdivision and published in two (2) newspapers published in the political subdivision. The decision to issue bonds may be a preliminary decision. IC 6-1.1-20-5.

The taxpayer objection proceedings which formerly allowed ten (10) or more taxpayers who were affected by the proposed issuance of the bonds to object on the grounds the bond issue was "unnecessary or excessive," no longer applies to bond issues or lease rentals.

PUBLIC IMPROVEMENT BONDS

When a political subdivision decides to issue bonds or enter into a lease rental agreement payable from property taxes to finance a public improvement, they must adopt an ordinance or resolution.

The political subdivision may *not* advertise for or receive bids for the construction of the improvement until the expiration of the time period within which taxpayers may file a petition:

- for review of or to remonstrate against a proposed bond issue or lease during the petition and remonstrance process; or
- to initiate the referendum/local public question process. IC 6-1.1-20-9.

REVIEW AND APPROVAL BY DEPARTMENT

For bonds, leases, and other debt for which a political subdivision makes a preliminary determination, or adopts a resolution authorizing the bonds, lease rental agreement, or other obligations, review and approval by the Department is *not* required before a political subdivision may

issue or enter into bonds, a lease, or any other obligations payable from property taxes. IC 6-1.1-20-7.5.

If you have any questions about this memorandum on the petition and remonstrance, and referendum/local public question procedures, please contact the Department's General Counsel, Timothy J. Rushenberg, at (317) 233-6770 or trushenberg@dlgf.in.gov.

Attachments:

Glossary of Key Terms

Remonstrance flowchart

Referendum flowchart

GLOSSARY OF KEY TERMS

“Bonds”

“Bonds” means any bonds or other evidences of indebtedness payable from property taxes.

The following are **not** bonds:

- notes representing loans under IC 36-2-6-18 [county procuring money to be used in exercise of its powers and for payment of its debts, and to meet current running expenses], IC 36-3-4-22 [Indianapolis loans in anticipation of current revenues], IC 36-4-6-20 [city procuring money to be used in the exercise of its powers], or IC 36-5-2-11 [town procuring money to be used in the exercise of its powers and for the payment of its debts] which are payable within five (5) years after issuance;
- warrants representing temporary loans which are payable out of taxes levied and in the course of collection;
- a lease;
- obligations; or
- funding, refunding, or judgment funding bonds of political subdivisions. IC 6-1.1-20-1.

“Debt Service”

“Debt service” means principal of and interest on bonds. The term includes the repayment of an advance from the common school fund under IC 20-49-4-8. IC 6-1.1-20-1.2.

“Lease”

“Lease” means a lease by a political subdivision of any project with lease rentals payable from property taxes that are exempt from the levy limits of IC 6-1.1-18.5 [e.g., levy imposed to pay lease rentals under five (5) year lease] or (before January 1, 2009) IC 20-45-3 [school tuition support levy]. IC 6-1.1-20-1.3.

“Lease rentals”

“Lease rentals” means the payments required under a lease. IC 6-1.1-20-1.4.

“Obligations”

“Obligations” refers to a contract or promise to pay of a political subdivision that would be considered a bond or lease under this chapter but for the fact that it is payable solely from funds other than property taxes. IC 6-1.1-20-1.5.

“Property taxes”

“Property taxes” means a property tax rate or levy to pay debt service or to pay lease rentals, but does *not* include taxes to be paid to an allocation area under IC 6-1.1-39-5 [economic development districts], IC 8-22-3.5-9 [airport development zones], IC 36-7-14-39 [redevelopment project area], IC 36-7-15.1-26 [redevelopment project area in Marion County], or IC 36-7-15.1-53 [redevelopment project area in Marion County]. IC 6-1.1-20-1.6.

“Project”

“Project” means any project or purpose for which a political subdivision may issue bonds or enter into leases, including a sale-lease back of an existing building. IC 6-1.1-20-1.7.

“County voter registration office”

“County voter registration office” means a board of registration, or if there is no board, the office of the circuit court clerk of a county. IC 6-1.1-20-1.8.

“Registered Voter”

“Registered voter” means any of the following:

- In the case of a petition to initiate a petition and remonstrance process, an individual who is registered to vote in the political subdivision on the date the proper officers of the political subdivision publish notice of a preliminary determination by the political subdivision to issue bonds or enter into a lease.
- In the case of a petition in favor of *or* a remonstrance against a proposed debt service or lease payments, a registered voter is an individual who is registered to vote in the political subdivision on the date that is thirty (30) days after the notice of the petition and remonstrance process is published.
- In the case of a public question in a referendum on a project, an individual who is registered to vote in the political subdivision on the date that is thirty (30) days before the date of the election in which the public question will be held. IC 6-1.1-20-1.9.

“Project Cost”

The Department defines “project cost” as total project costs including “hard” and “soft” costs:

- construction costs;
- professional fees (e.g., architect fees, soil testing and surveys);
- land cost;
- building and equipment costs (e.g., building cost/demolition, technology equipment, loose equipment);
- other project costs (e.g., state fees and permits, utilities, local fees and permits, builders’ risk insurance, title insurance); and

- costs of financing (e.g., attorneys' fees, bond counsel, financial advisor fees, underwriters' fees, trustee fees, bond printing, legal advertising, capitalized interest, bond insurance, appraiser fees).

A contribution from the capital projects fund (CPF) is also to be included in the "project cost" calculation because the CPF is a property tax revenue source. Grants, gifts, and other non-property tax revenue sources are excluded from the "project cost" determination. IC 6-1.1-35-1(1).

"Controlled Project"

"Controlled project" means any project financed by bonds or a lease, except for the specific projects discussed below.

Controlled Project: If the project cost is more than the lesser of \$2 million or 1% total gross assessed value cost (\$1 million minimum); and if the political subdivision reasonably expects to pay debt service or lease rentals for the project from any of the following funds that are exempt from the levy controls:

- Levy imposed to pay or fund bonded indebtedness or lease rentals under a lease with an original term of at least five (5) years (e.g., debt service fund). IC 6-1.1-18.5-8.
- Levy imposed for major bridge fund. IC 6-1.1-18.5-9; IC 8-16-3.1.
- Levy imposed by port authority for cumulative channel maintenance fund. IC 6-1.1-18.5-9.5; IC 8-10-5-17.
- Levy imposed for hospital care for the indigent (levy repealed eff. 1/1/09). IC 6-1.1-18.5-9.7; IC 12-16-14.
- Levy imposed for county welfare fund borrowing (levy repealed eff. 1/1/09). IC 6-1.1-18.5-9.7; IC 12-19-5.
- Levy imposed for county family and children's fund (levy repealed eff. 1/1/09). IC 6-1.1-18.5-9.7; IC 12-19-7.
- Levy imposed for children's psychiatric residential treatment services fund (levy repealed eff. 1/1/09). IC 6-1.1-18.5-9.7; IC 12-19-7.5.
- Levy imposed for township borrowing for township assistance (eff. 1/1/09 levy controls apply to property taxes imposed after 12/31/08, to pay principal and interest on any short term loans obtained after 12/31/2008). IC 6-1.1-18.5-9.7; IC 12-20-24.
- Levy imposed for community mental health centers or community mental retardation and other developmental disabilities centers (eff. 1/1/09: exemption from levy controls apply only to a unit that funded such a center in 2008). IC 6-1.1-18.5-10; IC 12-29-1, -2.
- Levy imposed for jury fees (eff. 1/1/09: exemption contingent upon county council resolution). IC 6-1.1-18.5-10.1; IC 33-37-10-1.

- Levy imposed for a township firefighting fund (township levy for a particular year does not include the amount, if any, of property taxes payable to the township during the following calendar year under the authority of IC 36-8-13-4). IC 6-1.1-18.5-10.2; IC 36-8-13-4.
- Levy imposed by library board for a capital projects fund (eff. 1/1/09: levy controls apply to a library's capital projects fund levy). IC 6-1.1-18.5-10.3; IC 36-12-12.
- Levy imposed by a township or a fire protection district for a cumulative firefighting building and equipment fund. IC 6-1.1-18.5-10.4; IC 36-8-14.
- Levy imposed by a civil taxing unit for fire protection services within a fire protection territory (eff. 1/1/09: levy growth limited to growth quotient minus one (1)). IC 6-1.1-18.5-10.5; IC 36-8-19.
- Levy imposed on personal property of banks that became subject to assessment in 1989 and thereafter. IC 6-1.1-18.5-19.1; IC 6-1.1-2-7.
- Levy imposed by a local airport authority for a cumulative building fund. IC 6-1.1-18.5-20; IC 8-22-3-25.
- Levy imposed to repay a rainy day fund loan for qualified taxing units. IC 6-1.1-18.5-21; IC 6-1.1-21.9.

WHAT IS A CONTROLLED PROJECT?

STEP ONE: *Determine the lesser of \$2 million or 1% of the total gross assessed value (with \$1 million minimum).*

STEP TWO: *Choose the lesser of the amounts.*

STEP THREE: *If the project cost is at or below that lesser amount, it is not a controlled project; however, if the cost is over that lesser amount, it is a controlled project.*

- All projects with a cost of \$2 million or more = Controlled Project
- All projects with a cost of less than \$1 million = Not a Controlled Project
- A project with a cost between \$1 million and \$2 million but costs at least 1% of the total gross assessed value = Controlled Project

Example: Town with a \$1.25 million road project paid for with a bond issue from a debt service levy. 1% of the total gross assessed value for the town equals \$1 million. What is lesser of \$2 million or 1% of total gross assessed value? 1% of total gross assessed value (\$1 million) is the lesser of \$2 million or 1%. The project is a controlled project for the following reasons: first, the debt service is paid from a fund exempt from the levy limits – debt service fund; second, the \$1.25 million road project costs more than \$1 million, which is equal to 1% of the town's total gross AV.

- A project with a cost between \$1 million and \$2 million, *but* less than 1% of the total gross assessed value = **Not a Controlled Project**

Example: City has a \$1.5 million building project paid for with property taxes. 1% of the total gross assessed value for the city equals \$2.5 million. The building project is not a controlled project because the building project is under the controlled project threshold – the project cost is less than \$2 million and less than 1% of the city's total gross AV of \$2.5 million.

Not a controlled project: A project is not a controlled project even though the political subdivision has pledged to levy property taxes to pay the debt service or lease rentals if the non-exempt funds are insufficient (i.e., a property tax “back up”). IC 6-1.1-20-1.1 (1).

Not a controlled project: A project for which the political subdivision reasonably expects to pay debt service or lease rentals from funds *other than* the exempt funds above. *Id.*

Not a controlled project: A project that will cost the political subdivision *less than the lesser of:*

- \$2,000,000.
- An amount equal to 1% of the total gross assessed value* of property within the political subdivision on the last assessment date, if amount is at least \$1,000,000. IC 6-1.1-20-1.1(2).

Not a Controlled Project: A project that is being refinanced for the purpose of providing gross or net present value savings to taxpayers. IC 6-1.1-20-1.1(3).

Not a Controlled Project: A project for which bonds were issued or leases were entered into before January 1, 1996, or where the state board of tax commissioners has approved the issuance of bonds or the execution of leases before January 1, 1996. IC 6-1.1-20-1.1(4).

Not a Controlled Project: A project that is required by a court order holding that a federal law mandates the project. IC 6-1.1-20-1.1(5).

Not a Controlled Project: A project that:

- is in response to:
 - a natural disaster;
 - an accident; *or*
 - an emergency -- in the political subdivision that makes a building or facility unavailable for its intended use; and
- is approved by the county council of each county in which the political subdivision is located. IC 6-1.1-20-1.1(6).

* “Total gross assessed value” for purposes of the referendum and remonstrance / petition process means the assessed value of a political subdivision (e.g., school district) before TIF and any deductions or exemptions are subtracted from the assessed value. IC 6-1.1-35-1(1).